GOVERNMENT OF MYSORE

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT
(LABOUR)

Labour Dispute.—Industrial Dispute between the workmen and the management of Mysore State Electricity Board, Western Circle, Shimoga.

Award of the Industrial Tribunal, Bangalore, published.

Read the following papers :—

(1) Letter No. I.T. 2699-700/66-67, dated 28th February 1967 from Shri A. Panchakshariah, Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE

Dated 28th February 1967

Present :

Sri A. Panchakshariah, B.A. (HONS.) LL,B., Presiding Officer.

I.D. No. 160 *of* 1966

Workmen of Mysore State Electricity Board, Western Circle, Shimoga. .. *First Party*

Vs.

(1) Management of State Electricity Board, Western Circle, Shimoga.

(2) The Secretary, Mysore State Electricity Board, Shimoga. .. *Second Party.*

Appearances

For I Party :—Sri K. Subba Rao, B.A., LL.B., Advocate, Bangalore.

For II Party :—Sri B. R. Puttananjamma, M.A., B.L., Secretary, Mysore State Employers' Association, Bangalore.

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Reference

G.O. No. PLM 438 LLD 65, Bangalore, dated 19th September 1966

AWARD

In their Order No. PLM 438 LLD 65, dated 19th September 1966, the Government of Mysore, have referred under Section 10(1)(*d*) of the Industrial Disputes Act, 1947, an Industrial Dispute between the Workmen and Management of the Mysore State Electricity Board, Western Circle, Shimoga, to this tribunal for adjudication. The dispute is in relation to arrears of salary claimed by one Sri R. Surappa, II Division Clerk in the Office of the Executive Engineer (Electrical), Mysore State Electricity Board, Shimoga. The claim is made against the Mysore State Electricity Board. This reference was registered as I.D. No. 160 of 1966 and notices were taken out to both the parties. The I Party is represented by the Secretary, Mysore State Electricity Board Employees' Union, Local Committee, Shimoga, and the II Party is represented by Sri B. R. Puttananjappa, Secretary, Mysore State Employers' Association, Bangalore.

2. In the course of the claim statement, the I Party contends that Sri R. Surappa was appointed as a II Division Clerk in July 1961 and was working in the Shimoga Executive Engineers' Office. He had gone on leave from 2nd September 1963. During the period he was on leave, he was transferred by an order dated 19th September 1963 to Bellary by the then Chief Electrical Engineer. On 25th September 1963 he was served with the order of transfer with a direction that the transfer took effect from 2nd September 1963 and that he was relieved of his duties from Shimoga Division. This order of transfer was subsequently modified and he was directed to join duty at Raichur. The transfer order to Raichur again was cancelled and he was re-transferred to Bellary. Sri R. Surappa protested that the order of transfer was illegal. He therefore raised an industrial dispute. The matter was referred to the Labour Court, Bangalore, by means of a Reference dated 21st February 1964. The Labour Court gave its award on 24th November 1964 and this was published in the *Mysore Gazette*

on 25th February 1965. As per the award of the Labour Court, the transfer of Sri R. Surappa was held to be *mala fide*, illegal and unjust and the transfer was cancelled. As soon as the award was published, Sri R. Surappa, reported himself for duty at Shimoga Executive Engineer's Office but he was not allowed to join duty. The Chief Engineer had to intervene and pass a memo directing the Superintending Engineer to allow Sri Surappa to join duty. On 10th March 1965 he reported for duty. Sri Surappa contends that from 2nd September 1963 to 10th March 1965 he has not been paid his salary. As he was relieved of his duty at Shimoga, he could not join the office and do work and as his transfer to Bellary was illegal, he did not go and report himself for duty at Bellary. Therefore the I Party claims that Sri R. Surappa is entitled to full salary and allowances for the period between 20th September 1963 and 10th March 1965.

3. As against this, the II Party has filed a counter statement. The II Party admits that Sri R. Surappa was transferred from Shimoga Division of the Mysore State Electricity Board to Bellary Division, and he was relieved with effect from 2nd September 1963. The II Party also admits the dispute which was decided by the Labour Court, Bangalore, on a Reference made by the Government of Mysore. The II Party also admits that an award was passed by the Labour Court, Bangalore, on 24th November 1964 cancelling the order of transfer. It is also admitted that Sri R. Surappa joined duty at Shimoga Division on 10th March 1965. It is contended by the II Party that from 20th September 1963 up to the date of joining on 10th March 1965 Sri R. Surappa did not render service for the Board either in Shimoga Division or in Bellary Division or anywhere else. The contention of Sri Surappa that he is entitled for salary for this period is repelled by the II Party. It is further alleged that the Mysore State Electricity Board never prevented Sri R. Surappa from rendering service. In fact on his transfer, Sri Surappa applied for and received advance of pay and T.A. amounting to Rs. 146 and inspite of it he did not care to join duty as per the transfer order. It was his duty to obey the transfer order first and then put up his grievances or raise an industrial dispute. The II Party also contends that an independent reference in regard to the salary of Sri Surappa is incompetent. The question of wages for the

period claimed by Sri Surappa was a matter that arose directly under the previous Reference relating to the transfer and in fact, Sri Surappa urged in the Reference No. 4 of 1964 before the Labour Cout that he may be awarded backwages also. This relief was not granted by the Labour Court and therefore a separate dispute in respect of wages does not lie. On these grounds the II Party seeks to refute the claim of the I Party.

4. A reply was filed to this counter statement by the I Party denying most of the contentions raised by the II Party and affirming the allegations made in the claim statement. It is contended by the I Party that the order of transfer being illegal. Sri Surappa was not bound to obey this illegal order and therefore he is entitled to the salary and allowances for the period from 20th September 1963 to 10th March 1965.

5. On the basis of these p'eadings issues were framed by me in addition to the points of dispute in the Reference. The I Party examined Sri R. Surappa and closed its case, while the II Party did not examine any witnesses but closed its case. The documents that have been filed in this case have been marked as exhibits by the consent of both the parties.

5. The only point for consideration in this case is, whether this Sri R. Surappa is entitled to salary and allowances for the period between 20th September 1963 and 10th March 1965. Before taking up this point, I should like to dispose of some of the preliminary points raised by the II Party and those preliminary points are covered by Issues Nos. 1, 2 and 4. So far as Issue No. 4 is concerned, it can be straightaway said that by virtue of the award passed by the Labour Court, Bangalore, as per Exhibit W-4, the order of transfer is illegal and therefore it has been cancelled. Exhibit W-4 is a Gazette Copy of the award passed by the Labour Court. Sri B. R. Puttananjappa, who appeared for the II Party, conceded that as between the I Party and II Party, the finding of the Labour Court is binding and neither party can go behind this award. So then without difficulty whatsoever I hold that the transfer order of Sri R. Surappa is illegal. The II Party of Issue No. 4 is whether Sri R. Surappa was not bound to obey the transfer order. Here also there is no

difficulty in coming to the conclusion that Sri R. Surappa was not bound to obey the transfer order. I am referring to a decision of the Supreme Court reported in 1960 (I) LLJ 580, wherein their lordships of Supreme Court have held that such illegal orders need not be obeyed by the workmen. Another decision of the Supreme Court reported in 1966 (I) LLJ 437 is also to the same effect. Similarly a decision in 1963 (I) LLJ 282, is a decision of the Supreme Court on this point. Sri B. R. Puttananjappa appearing for the II Party, conceded this position and in fact his attempt to show that this order of transfer is not binding on this tribunal did no succeed. It was argued by Sri B. R. Puttananjappa that Sri R. Surappa drew advance of T.A. and one month's advance of pay in order to comply with the order of transfer and he is now estopped from contending against the validity of this transfer order. Surely this cannot be a ground so far as the present dispute is concerned. This would have been a very good ground for the II Party to have taken it up when the transfer order was challenged before the Labour Court. I am therefore of the opinion that Sri Surappa is not estopped from claiming the arrears of salary and allowances by reason of his having drawn advance of T.A. and salary under the transfer order. On the latter part of Issue No. 4 I hold that Sri Surappa was not bound to obey the transfer order. Again it was contended by Sri B. R. Puttananjappa that the present Reference being an independent Reference from the one made in Reference No. 4 of 1964 to the Labour Court, is not valid. It was open to Sri Surappa to have urged his claims for arrears of salary and allowances before the Labour Court when he challenged the transfer order and in fact he did raise a contention that he was entitled to the arrears of salary and allowances for the period in dispute. This argument cannot be accepted for the simple reason that even though Sri Surappa claimed the arrears of salary and allowance before the Labour Court, the Labour Court had no jurisdiction to make an award on this point. The Labour Court derived its jurisdiction only under the order of the Referenec, and Exhibit W-4, copy of the Gazette publication, refers to the points of disputes sent down for adjudication by the Labour Court. According to this Exhibit W-4 this is what the Government had referred :—

"Should the order of transfer of Sri R. Surappa, II Division Clerk in the Office of the Executive Engineer (Elec-

trical), M.S.E.B., Shimoga,. issued by the Manngement, be cancelled ?"

That was the only matter that was referred to the Labour Court and the question of arrears of salary and allowances was not at all the subject matter of that Reference, and the Labour Court would have been wrong if it had embarked upon to decide the question of arrears of salary and allowances in that Reference. Sri B. R. Puttananjappa conceded this position and agreed that it would have been in excess of the jurisdiction of the Labour Court if it had decided the question of arrears of salary and allowances due to Sri R. Surappa. My finding on Issue No. 1 therefore is that this Reference though independent from Reference No. 4 of 1964, is valid.

6. The only other important point that remains to be considered is issue No. 2. Under issue No. 2 the burden is on the II Party to show that Sri Surappa did not render service under the II Party management from 20th September 1963 to 10th March 1965 to entitled him to salary and allowances from 20th September 1963 to 10th March 1965. If he fails to prove that he rendered service or was prepared to render service during the period, the next question would be whether the II Party is responsible for the situation and therefore the II Party is bound to pay Sri R. Surappa the arrears of salary and allowances for the period between 20th September 1963 and 10th March 1965.

7. I am now referring to some documents which throw some light on this point. Exhibit W-1 is the order of transfer under which Sri Surappa was transferred from Shimoga Division to Bellary Division as against the existing vacancy. This transfer order is dated 19th September 1963. It appears that during this period Sri Surappa was on leave and while he was on leave, this transfer was effected and it is also alleged by the II Party that he extended his leave but the extended leave was not sanctioned. He was served with this transfer order on 29th September 1963. Exhibit W-2 is the Order relieving Sri Surappa of his duties at Shimoga and this order is dated 24th September 1963. He is stated to have been relieved with effect from 2nd September 1963. I am referring to this document just to show that the argument advanced by Sri K. Subba Rao is not tenable. Sri Subba Rao argued that Sri Surappa was not bound to obey the order of

transfer and report himself for duty at Bellary since the order of transfer was illegal, *mala fide* and unjustifiable. Sri Surappa could not report himself for duty at Shimoga because he had been relieved by virtue of the order Exhibit W-2, dated 24th September 1963. Therefore the M.S.E.B. was responsible for not utilising his services between this period and in a way forced unemployment on Sri Surappa between tris period. In other words it was argued that this is an unvoluntary unemployment brohght about on Sri Surappa for which he is not to be blamed. Sri Subba Rao cited two authorities for this position, one is a decision of the Supreme Court reported in 1960 (I) LLJ 580, and the other is also a decision of the Supreme Court reported in 1966 (I) LLJ 437. On the strength of these two authorities Sri Subba Rao claimed that the claim for arrears of salary and allowances of Sri Surappa is justifiable. I first take up the decision of the Supreme Court in 1960 (I) LLJ 580. This was a case of an employer trying to introduce changed conditions of service because he wanted to introduce a scheme of rationalisation which was likely to render some of the workers surplus and also increase the workload on the remaining workers. This dispute was referred for adjudication, but the workmen refused to work under the altered conditions. Consequently the employer declared a lock-out as a result of which the workers were denied work. The industrial dispute relating to the claim by the concerned workmen for wages for the period of lock-out was also referred for adjudication, and the Supreme Court upheld the award of the industrial tribunal directing payment of such wages to the concerned workmen. This case differs from the case on hand. By declaring a lock out the employer completely closed the doors of the factory for work and even though the workmen were anxious to work, they had no opportunity and therefore this involuntary unemployment was forced on them. In the present case Sri Surappa did not go without any employment. Therefore there was no unemployment forced upon him by the II Party. Though he was justified in disobeying the order of transfer to Bellary and in not reporting himself at Bellary, yet he is not reporting for duty at Shimoga Office, cannot be excused. It was open to him to have called on the management and told them that he was disobeying the order of transfer as it was illegal, and was prepared to work at Shimoga. and if the II Party did not utilise his services for this period the II Party would have been responsible for all the consequences. He never did this. On the other hand he quitely kept at home.

So then the decision cited by Sri Subba Rao in 1960 (I) LLJ 580, is only to the position that the workmen need not obey the illegal orders of transfer.

8. Another decision of the Supreme Court was also referred to by Sri K. Subba Rao and that is at 1966 (I) LLJ 437. I fail to see how this decision is applicable to the facts of this case. In this case a permanent employee of the State Transport Corporation, Gujarath, applied for leave for 15 days on the ground of personal work. On the expiry of the leave he was transferred to a new place. He did not join duty at the new place but applied for extension of leave which was refused. He did not join the new place inspite of this refusal. He was removed from service on the ground of long absence without framing a charge and giving an opportunity to show cause as required by the regulations governing the service conditions. The High Court dismissed the application, but the Supreme Court set aside the decision of the High Court and held that the order of termination passed against the employee was bad in law since it contravened the provisions of Section 4 (*b*) of the regulations. Though in cases of termination, when the order of terminations is set aside, the workman is entitled to arrears of salary from the date of termination, the same cannot be said in a case of transfer. In case of termination of service, there is cessation of relationship of employer and employee and so too in the case of dismissal. In both these cases the workman had lost the employment and even though he may be desirous of continuing to work, he cannot do so because either he will have been removed from service or dismissed from service. In the present case this is only a transfer. If Sri Surappa did not report himself for duty, at Bellary, it cannot be said that he has lost the employment or that he was unemployed. He was bound to have reported himself for duty at the Shimoga Office every day during this period, and further he was bound to have told the management that, if he was not taken on duty the management would be responsible for all the consequences. The order of relief is not the same thing as the order of termination or order of dismissal. The order of transfer which is illegal empowers the workman only to get it set aside on the ground that it is not *bona fide* or that it is *mala fide* and therefore he need not obey it. In almost a similar case reportel in 1963 (I) LLJ 282, a workman who had been transferred, raised an industrial dispute with regard to the justifiability of the transfer, and this

was referred for adjudication to the Industrial Tribunal. The Industrial Tribunal found that the order of transfer made by the management was on account of the hostility of the management against the workman concerned and the union of which he was a member and that it was not *bona fide*. Further, the tribunal directed re-transfer of the workman to the old factory and this order has been up-held by the Supreme Court.

9. The only ground which the I Party contends is that Sri Surappa could not have reported himself for duty at the Shimoga Office because he had been relieved of his duties. I have already pointed out above that order of relief is not the same thing as the order of termination or dismissal. There was no cessasion of the appointment of Sri Surappa nor was there any cessation of the relationship of employer and employee between Sri Surappa and the II Party management. This relationship was not even suspended. Excepting that one ground there are no other grounds for Sri Surappa not reporting himself for duty at the Shimoga Office every day during this period. In an anologous case where lay-off compensation is claimed by the workers, Section 25E of the Industrial Disputes Act, lays down that no compensation can be paid to a workman who has been laid off, if he does not present himself for work at the establishment at the appointed time during normal working hours atleast once a day. Here also it is a case of the management having effected a lay-off and the workmen know that during this period of lay-off they would not be entertained for work. Inspite of that, law insists upon his presence at the workspot every day, otherwise it deprives him of the lay-off compensation. Taking this view of the matter, therefore Sri Surappa was not right in not presenting himself at the Shimoga Office. On the contrary his conduct is quite clear and that is, immediately after the order of transfer was passed, he applied for advance of T.A. and salary on 26th September 1963 and in fact he drew this advance of salary and T.A. which he had not returned even till to-day. His intention to disobey the order of transfer is manifested in this behalf. For some reason or other, while for valid reasons he did not report himself for duty at Bellary Office but his failure to report himself at the Shimoga Office is inexcusable. Under Section 2 (6) of the Workmen's Compensation Act wages have been defined as meaning all remuneration, whether by way of salary, allow-

ances or otherwise expressed in terms of money or capable of being so expressed, which would for the terms of employment, express or implied, were fulfilled, be payable to a person in respect of his employment or work done in such employment, etc. The condition precedent for Sri Surappa claiming the salary and allowances for the above period is that he must have fulfilled his part of the contract or must be ready and willing to perform his part of the contract before entitling himself to the salary and allowances. The question is, did Shri Surappa perform his part of the contract or whether he was willing to perform his part of the contract. The answer is that Sri Surappa has failed to perform his part of the contract and there has been no offer from him to perform his part of the contract.

10. In the circumstances of the case, I am of the opinion that Sri Surappa is not entitled to claim arrears of salary and allowances for the period from 20th September 1963 to 10th March 1965. Accordingly my finding on issue No. 2 is that Sri Surappa did not render service to the II Party management from 20th September 1963 to 10th March 1965 to become entitled for the arrears of salary and allowances for the said period, and if he did not render service under the II Party management during this period, it is not the II Party that is responsible for this situation but Sri Surappa himself has brought about this situation and voluntary unemployment. My finding on the latter part of Issue No. 2 is that the II Party is not bound to pay the arrears of pay and allowances to Sri Surappa for the period between 20th September 1963 and 10th March 1965. Accordingly I answer the Reference in the negative.

11. In the circumstances of the case, each party will bear its own costs.

A. PANCHAKSHARIAH,
Presiding Officer,
Industrial Tribunal.

ORDER

Bangalore, dated 13th March 1967

S.O. 712.—WHEREAS by State Government Order No. PLM 438 LLD 65, dated 19th September 1966, the Industrial Dispute between the Workmen and the Management of Mysore State Electricity Board, Western Circle, Shimoga, was referred to the Industrial tribunal, Bangalore, for adjudication.

AND WHEREAS the Industrial Tribunal, Bangalore, has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore, are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. PLM 438 LLD 65]

By order and in the name of the Governor of Mysore,

G. G. PUROHIT,

Under Secretary to Government,
Labour and Municipal Administration
Department.

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